

been shipped in interstate commerce on or about November 4, 1935, by the Center Milk Products Co., from Frankfort, N. Y., and that it was adulterated and misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Vita Brand Milk Powder Full Cream Separated * * * Center Milk Products Co. * * * Middlebury Center Penna."

The article was alleged to be adulterated in that skim-milk powder had been substituted wholly or in part for milk powder which the article purported to be.

The article was alleged to be misbranded in that the statement "Milk Powder", borne on the label, was false and misleading and tended to deceive and mislead the purchaser when applied to skim-milk powder; and in that the article was offered for sale under the distinctive name of another article.

On March 28, 1936, no claimant having appeared, judgment of condemnation was entered and it was ordered that the product be destroyed.

W. R. GREGG, *Acting Secretary of Agriculture.*

25907. Misbranding of beer. U. S. v. 150 Cases of Beer. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. no. 36787. Sample no. 52695-B.)

This case involved an interstate shipment of beer which was found to contain less alcohol than the percentage thereof represented on the label.

On December 12, 1935, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 150 cases of beer at St. Louis, Mo., alleging that the article had been shipped in interstate commerce on or about November 27, 1935, by the Miller Brewing Co., from Milwaukee, Wis., and that it was misbranded in violation of the Food and Drugs Act. The article was labeled in part: "Old Original Miller Beer Brewed & Bottled by Miller Brewing Co. Milwaukee, Wis., U. S. A. Guaranteed not less than 9% Proof Winter Beer."

The article was alleged to be misbranded in that the statement "Guaranteed not less than 9% Proof Winter Beer", borne on the label, was false and misleading and tended to deceive and mislead the purchaser when applied to a product containing 4.77 percent of alcohol by volume.

On January 3, 1936, the Miller Brewing Co., claimant, having admitted the allegations of the libel and having consented to the entry of a decree, judgment of condemnation was entered and it was ordered that the product be released under bond conditioned that it be labeled to comply with the law.

W. R. GREGG, *Acting Secretary of Agriculture.*

25908. Adulteration and misbranding of canned cherries. U. S. v. 117 Cases of Canned Cherries. Consent decree of condemnation. Product released under bond to be relabeled. (F. & D. no. 36788. Sample no. 53880-B.)

This case involved an interstate shipment of canned cherries which were represented on the label to be extra large pitted cherries, when they were, in fact, unpitted cherries of various sizes, the weight of the largest cherry being more than 80 percent larger than the smallest.

On December 13, 1935, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 117 cases of canned cherries at Philadelphia, Pa., alleging that the article had been shipped in interstate commerce on or about August 14 and 27, 1935, by the Cherry Growers Packing Co., from Traverse City, Mich., and that it was adulterated and misbranded in violation of the Food and Drugs Act. The article was labeled: "Zeneda Brand Extra Large Dark Sweet Pitted Cherries in Syrup Contents 6 Lb. 9 Oz. Packed by Cherry Growers Packing Company Traverse City, Mich."

The article was alleged to be adulterated in that unpitted cherries of various sizes had been substituted for extra large pitted cherries which the article purported to be.

The article was alleged to be misbranded in that the statement "Extra Large * * * Pitted Cherries", borne on the label, was false and misleading and tended to deceive and mislead the purchaser when applied to a product consisting of unpitted cherries of various sizes. The article was alleged to be misbranded further in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture for such canned food, since the cherries were not of uniform size, the weight of the largest cherry being more than 80 percent in excess of the weight of the smallest, and